

Attachment -Additional Questions for the Record

The Honorable Randy Weber

1. Your company—MidCo—participates in the ACP. If ACP is not extended before it runs out of funding as it is estimated to do in April 2024, what is your company’s plan for subscribers that rely on the program’s \$30 per month benefit?
 - a. I think all agree that ACP, in the ideal sense, is a good thing. But I believe the program still needs we reforms to address concerns about wasted taxpayer dollars and to be sure we are sending those dollars where they are needed most.

A: Midco and other cable ISPs have a long history of offering low-income subscribers an affordable service offering, but no single company’s program can achieve the scale and scope of ACP. If the goal of the post-BEAD world is to have more Americans able to access the extensive job, health, educational, and entertainment benefits that broadband can offer, Congress should allocate funding for the program’s continued support. Without new funding, ISPs will likely be forced to begin notifying their customers that they will lose their subsidy, so that they can act accordingly and prepare for the possible loss of service. At Midco, we will work with our existing ACP customers and try to take care of their individual situations, but ISPs cannot absorb the entirety of this cost and provide free or nearly free services at the level of the federal government.

2. How many of these 130 programs under BEAD are utilized by MidCo? Do you know them all?

A: In the last few years, there has been a reinvigorated focus on broadband expansion and the federal government’s extraordinary level of time, effort, energy, and resources has led to 133 broadband funding programs administered by 15 agencies.¹ Midco participates in 6 programs. With so many programs, it is critical that we not waste a once in a lifetime opportunity to close the digital divide by allowing these programs to get off track or lose focus due to fragmentation and overlapping, which has led to duplicative support. Congress should evaluate the impact of current funding and reduce or eliminate programs that are no longer necessary.

The Honorable Rick Allen

1. Can you talk about your experiences dealing with different agencies? Are they communicating with each other and how can that be improved?

A: With numerous federal agencies and nearly all states dedicating funding to broadband deployment, the government must establish greater consistency and better communication between federal agencies when awards are made, so that money is spent transparently and does not duplicate other agencies’ efforts. The recent Memorandum of Understanding Regarding Information Sharing between the FCC, Agriculture, the NTIA, and Treasury is an important first step towards reaching that goal, but further

¹ <https://www.gao.gov/assets/gao-23-106818.pdf>

actions will be required in the coming years, as the pace of grant activity and broadband construction intensifies. One important aspect of further coordination would be action to make the programs, their eligibility standards, and their requirements as consistent as possible. Another important step is utilization of the National Broadband Map, but ideally, all agencies would rely on a single map that shows areas that are served, areas where networks are being constructed by private investment, and all areas where federal, State, or local funding has been awarded, so that remaining dollars can be targeted at the areas not yet covered.

2. I am concerned about certain union provisions that NTIA included in the BEAD program. These requirements do not exist in law, and I worry that they will make deployment slower and more expensive. How would these requirements affect your projects, and do you see them in other federal broadband programs?

A: Such requirements are counterproductive given that only a small fraction of the telecommunications workforce is unionized, it would be extremely difficult or impossible to use only unionized labor while still meeting the timelines and expectations of the broadband funding programs. The union provisions are also unnecessary. The cable industry has a long history of recruiting and retaining a talented workforce by offering excellent wages and benefits. There is no reason to treat funding applicants differently based purely on the identity of their labor pool, and doing so discourages the widespread participation on which these programs' success relies.

3. Currently, the U.S. federal court system is deciding whether the funding mechanisms for the FCC's Universal Service Fund are unconstitutional. How should Congress respond if the courts decide that these funding mechanisms are unconstitutional?

A: Regardless of the outcome of the court cases, USF reform by Congress is warranted. USF plays a critical role in the cable industry's efforts to connect all Americans with high-speed internet, but the program does have flaws that Congress can address. With the influx of federal funding focused on broadband expansion, it is a historic opportunity for Congress to smartly reform USF so that its programs bring the benefits of broadband to consumers in ways that are efficient.

Reforming USF should start with a recognition of the new communications landscape, a comprehensive review of existing programs, and a budget to guide priorities and promote accountability. While USF was previously the primary means of government support for constructing communications infrastructure and enabling low-income households to purchase affordable communications services, the impact of USF has been eclipsed in recent years by government programs funded by Congressional appropriations to expand broadband access and adoption. Given the volume of existing support and the wide array of objectives that funding is used for, continuing to fund programs through Congressional appropriations will be critical in supporting universal service objectives. In contrast to USF contributions, appropriations offer more financial stability, provide direct Congressional oversight, and avoid the market distortion of trying to tax some goods and services but not others. Such an approach is far preferable to continued FCC efforts to reform a flawed funding mechanism and is particularly important with respect to new programs, like ACP, which originated with appropriated

funding and would significantly increase the USF budget if funded through the contribution mechanism.

The Honorable Russ Fulcher

1. MidCo is in a few broadband programs. Which program has been the easiest to work with and what lessons can we take from how it operates?

A: Midco likes the reverse auction, in Connect America Fund Phase II and the Rural Digital Opportunity Fund. ACP has been the easiest program to date of the low-income programs. ACP has more than doubled the number of participating households in just over one year of operation. The program also eliminates the unnecessary and often burdensome requirements of the past, like the Eligible Telecommunications Carrier (ETC) requirement, resulting in a much broader range of participating providers that can help connect more Americans. All major cable broadband providers, including Midco, Charter, Comcast, Cox, GCI, Mediacom, and Vyve, promote and participate in ACP.

2. As a small provider, do you feel that you're able to compete fairly for funding against some of the larger firms? What have you seen in different programs that help small providers like yours?

A: When it comes to competing for broadband funding, the biggest challenges we face do not come from larger providers, but rather the policies and regulations that make it difficult, if not impossible, to participate. Those challenges include unwarranted preferences and bias for certain providers (government networks, nonprofits, and cooperatives), complex application process, rate regulation, ETC requirement, interconnection and open-access requirements, unduly burdensome labor rules, and post-award burdens.

3. Smaller broadband providers can rely on subcontractors to lower the cost to bid on projects, making them more competitive. Small broadband providers are crucial in my state. They also have knowledge of the local needs and challenges with getting broadband installed. Other ideas include simplifying the process, and not imposing Davis-Bacon and other prevailing wage rules on contractors like we have seen in manufactured housing and in the trailer markets. Can we keep this limited, given BEAD requirements?

A: Agencies and states administering funding programs must resist the temptation to try and advance other interests by layering on contested policies and regulations related to operational practices that needlessly raise costs and discourage participation. Requirements such as unduly burdensome labor rules, specifically Davis-Bacon and similar prevailing wage rules, disfavor or discourage applicants with proven experience, distract from the goals of federal broadband programs, and add costs to serving areas that are already too expensive to serve.

In some cases, agencies are going well beyond what Congress intended in these areas and disrupting the delicate balance Congress envisioned. For example, Congress in the

Infrastructure Investment and Jobs Act required that priority be given to projects based on “a demonstrated record of and plans to be in compliance with Federal labor and employment laws.” In implementing the program, however, NTIA went much further. Its rules automatically presume that a provider with a non-unionized workforce or that does not use a project labor agreement will not be able to demonstrate compliance with its legal obligations. Such requirements are counterproductive and unnecessary.

At a time when all hands on deck are needed to close broadband gaps, Congress should discourage agencies from adding programmatic obligations that interfere with standard operational practices, making the challenging economics of serving rural, high-cost areas even more difficult or even impossible. BEAD, and indeed all government programs seeking to incent companies to build in the hardest-to-reach parts of the country, can only succeed with the broadest participation by well-qualified ISPs.

The Honorable August Pfluger

To participate in the USF Lifeline and high-cost programs a provider must be certified as an Eligible Telecommunications Carrier (ETC) by their respective state regulatory commission.

1. Do you think this ETC requirement is still necessary, and is it the only way we can have oversight over USF recipients?

- a. What other oversight vehicles should we explore this Congress?
- b. Should this ETC requirement extend to ACP providers as well?

A: The federal government has recently provided unprecedented support for advancing broadband deployment and adoption through the Infrastructure Investment and Jobs Act and other laws. Accordingly, now is an especially ripe time for Congress to revisit current and future universal service policy objectives. Among other questions, Congress should decide how much money should be spent achieving those objectives, and determine which programs are best suited to supporting those objectives. Congress should begin by considering the overall budget of the USF, directing the FCC to review programs currently funded under the USF, and considering potential program reforms given the range of competitive options and other sources of funding available to advance those goals.

The ETC requirement is an unnecessary, outdated, and anti-competitive burden that uniquely discourages qualified broadband providers from participating in federal universal services programs. When Congress appropriated funding for ACP and for BEAD, it properly did not require an ETC designation, recognizing that the regulatory requirement was no longer necessary for a broadband world. The ETC designation adds no benefits and protections, a reality highlighted by the successful track record for non-ETC providers participating in ACP. Even without the ETC requirement, the FCC is well-positioned to safeguard the distribution and use of federal funds by grant recipients and ensure those same providers are equipped to meet service requirements and operational milestones.

The ETC rules date back to 1996 when providers were applying for federal funding to deliver landline telephone service. But today, 27 years later, when universal service is a

national goal, the requirement has become a maze of inconsistent bureaucratic, mission-building red-tape.